

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10-EDC-0174

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STANDARD OF REVIEW

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N.C. 57, 63-64, 414 S.E.2d 339, 342 (1992); *Moore v. Fieldcrest Mills*, 36 N.C. App. 350, 353, 244 S.E.2d 208, 210 (1978), *aff'd*, 296 N.C. 467, 251 S.E.2d 419 (1979). "The real purpose of summary judgment is to go behind or pierce the pleadings to determine if a case has any merit." *Singleton v. Stewart*, 280 N.C. 460, 464, 186 S.E.2d 400, 403 (1972). As the North Carolina Supreme Court has said:

The purpose of summary judgment can be summarized as being a device to bring litigation to an early decision on the merits without the delay and expense of a trial where it can be readily demonstrated that no material facts are in issue. Two types of cases are involved: a) Those where a claim or defense is utterly baseless in fact, and b) those where only a question of law on the indisputable facts is in controversy and it can be appropriately decided without full exposure of trial.

Kessing v. National Mortgage Corporation, 278 N.C. 523, 533, 180 S.E.2d 823, 829 (1971).

FINDINGS OF FACT

1. Respondent Wake County Board of Education is a local education agency (LEA) receiving funds under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, (IDEA) and was responsible for providing special education to *STUDENT* pursuant to Article 9, Chapter 115C, of the General Statutes, when *STUDENT* was enrolled in the Wake County Public Schools.
2. Petitioner *STUDENT* re-enrolled in the Wake County Public School System in August 2008 at ABC High School. Prior to enrolling at ABC High School (ABCHS), *STUDENT* attended high school in New Jersey for one year. Prior to moving to New Jersey, *STUDENT* had attended Wake County Public Schools and completed elementary and middle school.
3. *STUDENT* has been identified as a child in need of special education services and had an Individual Education Program (IEP) while attending elementary and middle school in Wake County and while attending school in New Jersey. Respondent received an IEP for *STUDENT* from New Jersey when he returned to Wake County Public Schools.
4. When *STUDENT* enrolled at ABCHS in August 2008, he was placed in a Curriculum Assistance (CA) course. *STUDENT* was not placed in any in-class resource (ICR) courses at ABCHS. *STUDENT* had received ICR support in New Jersey.
5. At an October 2008 IEP meeting, *PARENT* expressed his concern about *STUDENT*'s Civics and Economics course. Specifically, *PARENT* asked why *STUDENT* had not been placed in a Civics class with ICR support.
6. *STUDENT*'s IEP team discussed *STUDENT*'s class placement and decided that he would not be placed in a different Civics course with ICR support. *PARENT* acknowledged during his March 1, 2010, deposition and during the motions hearing that he understood in October 2008 that *STUDENT* would not be placed in an ICR Civics course. *PARENT* did not agree with the team's decision.

7. *STUDENT* did not pass Civics or the state-required End-of-Course Civics exam during the fall 2008 semester. *STUDENT* was not permitted under the state guidelines to retake the End-of-Course exam.
8. Options were discussed with *PARENT* for *STUDENT* taking the Civics class. *STUDENT* has not re-enrolled in Civics. North Carolina requires students to pass Civics in order to receive a high school diploma.
9. *STUDENT* was enrolled in English during the spring 2009 semester. Late in the spring semester, *PARENT* expressed concerns to ABCHS's principal, S.L., about *STUDENT*'s English teacher. Specifically, *PARENT* was concerned about the teacher's level of experience and her responsiveness to his questions.
10. *STUDENT* did not pass English during the spring 2009 semester.
11. *STUDENT* was re-enrolled in English during the spring 2010 semester; however, he did not complete the course because he and *PARENT* relocated to Arizona in March 2010.
12. On January 19, 2010, *PARENT* filed a Petition for Contested Case Hearing alleging that the Respondent had violated the Individuals with Disabilities Education Act.
13. In the Petition, *PARENT* sought the following as relief:

“A meeting with school administration to discuss and resolve the gross errors of ABCHS from the 2008-09 school year. The resolution should include a recalculation of [*STUDENT*'s] grades based on the school's errors and/or means to allow him to have critical papers and tests reviewed that led to the failure and biases toward him by the teacher. A reassessment of the Civics EOG score, failure to allow a retake, and final grade will also be discussed and agreed upon.”

CONCLUSIONS OF LAW

1. The federal regulations implementing the IDEA state that parents may initiate a due process hearing if the local education agency (LEA) “(i) [p]roposes to initiate or change the identification, evaluation or educational placement of the child or the provision of [free appropriate public education] FAPE of the child, or (ii) [r]efuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child.” 34 CFR §300.503(a)(1), (a)(2); §300.507(a)(1).
2. In accordance with the IDEA, North Carolina state law and regulations grant parents the right to initiate a due process hearing with the Office of Administrative Hearings if they have certain concerns with the manner in which their child is being educated by the LEA.
3. The jurisdiction given to OAH in these matters is limited to “matters related to the identification, evaluation or educational placement of a child with a disability, the provision of FAPE to the child or a manifestation determination.” North Carolina Policies Governing Services for Children with Disabilities §1504-1.8(a)(1).
4. Under North Carolina law, parents are required to file a petition that “sets forth an alleged violation that occurred *not more than one year* before the party knew or

reasonably should have known about the *alleged action* that forms the basis of the petition.” Gen. Stat. §115C-109.6(b).

5. There are two exceptions to the one-year statute of limitations in North Carolina law. Specifically, the one-year statute of limitations shall not apply if a parent is prevented from filing a petition because the LEA (1) specifically misrepresented that it had resolved the problems forming the basis of the petition or (2) withheld information required to be provided under state or federal law. Gen. Stat. §115C-109.6(c).
6. It is uncontested that *PARENT* was aware in October 2008 that *STUDENT*'s IEP team had decided not to place *STUDENT* in an ICR Civics course.
7. There is no evidence that Petitioner meets either of the exceptions to the one-year statute of limitations.
8. The statute of limitations began to run on Petitioner's claim regarding *STUDENT* placement in an ICR Civics course in October 2008. Petitioner had until October 2009 to file a Petition for Contested Case Hearing regarding this issue; however, the petition was not filed until January 19, 2010.
9. The Board is entitled to judgment as a matter of law on Petitioner's claim regarding *STUDENT*'s placement in an ICR Civics course.
10. Even if Petitioner's claim regarding *STUDENT*'s Civics class was not time-barred, the only relief Petitioner seeks is alteration of *STUDENT*'s Civics and English grades.
11. The Office of Administrative Hearings lacks subject matter jurisdiction over grade disputes.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned **ALLOWS** Respondent's Motion to Dismiss and Motion for Summary Judgment. Disposition of this case by dismissal in accord with Chapter 3 of Title 26 of the North Carolina Administrative Code, and N.C. GEN. STAT. § 150B-33(b)(10) and N.C. GEN. STAT. § 1A-1, Rule 41(b) of the North Carolina Rules of Civil Procedure, as well as the Federal Regulations relating to IDEA cited above, is proper and lawful. It is hereby **ORDERED** that this matter be **DISMISSED with prejudice**.

NOTICE

The North Carolina Department of Public Instruction has notified the Office of Administrative Hearings that a Final Decision based on an Order of dismissal is not subject to appeal to the NC Department of Public Instruction.

Pursuant to the provisions of NORTH CAROLINA GENERAL STATUTES Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the

Administrative Law Judge's Decision and Order. N.C. GEN. STAT. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Pursuant to N.C. GEN. STAT. §150-B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial review must be sent to the Office of Administrative Hearings at the time of the appeal.

In the alternative, any person aggrieved by the findings of decision of this Final Decision, Order of Dismissal may institute a civil action in the appropriate district court of the United States as provided in Title 20 of the United States Code, Chapter 33, Subchapter II, Section 1415 (20USC 1415). Procedures and time frames regarding appeal into the appropriate United States district court are in accordance with the aforementioned Code cite and other applicable federal statutes and regulations. A copy of the filing with the federal district court should be sent to the Exceptional Children Division, North Carolina Department of Public Instruction, Raleigh, North Carolina so that the records of this case can be forwarded to the court.

IT IS SO ORDERED.

This the 25th day of May, 2010.

Donald W. Overby
Administrative Law Judge